



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chemical Device Corporation; The Defense
Logistics Agency--Request for
Reconsideration

File: B-232200.3; B-232200.4

Date: September 26, 1989

DIGEST

Decision sustaining protest and recommending resolicitation on grounds that solicitation's evaluation of bids clause was ambiguous is affirmed where decision was not based on error of fact or law.

DECISION

Chemical Device Corporation and The Defense Logistics Agency request reconsideration of our decision American Cyanamid Co., B-232200.2, June 23, 1989, 89-1 CPD ¶ 593. In that decision we sustained a protest filed by American Cyanamid concerning an evaluation provision in invitation for bids (IFB) No. DLA400-88-B-2965 issued by the Defense Logistics Agency for chemical safety lights. The Agency and Chemical Device primarily argue that we incorrectly recommended cancellation of the solicitation without evidence that any bidder was prejudiced by the provision which we found did not set forth the correct method of award. The decision is affirmed.

The IFB requested bids for various estimated quantities of six different types of chemical safety lights for delivery to several locations. Essentially, we held that the IFB required a single award for each destination's total requirement whereas the agency wished to make multiple awards for the different types of lights regardless of their destination.

In their requests for reconsideration, the Agency and Chemical Device both contend that cancellation is not justified here because we made no affirmative finding that any bidder was prejudiced. They argue that there was no

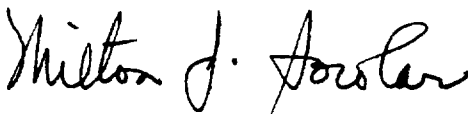
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"persuasive showing" of prejudice as required by A to Z Typewriter Co., et al., B-215830.2 et al., Feb. 14, 1985, 85-1 CPD ¶ 198, which was cited in our prior decision. In the cited case, the contracting agency terminated an indefinite quantity requirements contract because the solicitation did not expressly state that each unit price would be multiplied by an estimated quantity for evaluation purposes. We found that any firm submitting a bid under that solicitation had to take the government's estimated quantities, which were included in the solicitation, into account. Consequently, we found no persuasive evidence that any bidder was prejudiced by the solicitation's failure to explicitly explain the intended evaluation process and recommended that the award be reinstated.

We believe the situation in A to Z Typewriter Co. differs from the case here as far as the seriousness of the solicitation defect is concerned. In the cited opinion the defect was minor as the actual estimated quantities were included in the solicitation so that bidders were able to consider them in preparing their bids even if they were not expressly informed that the estimates would be used for evaluation purposes. In the present case, however, the solicitation included a method of award clause which expressly stated that award would be made based on destination when the agency admits that it had no intent to make award on such a basis. Thus, we think that the flaw in the solicitation here was more serious than that in the A to Z Typewriter case in that rather than just omitting some of the award terms it set forth an erroneous basis of award. Under the circumstances, where bids were submitted on different bases, because of a defective solicitation provision, we believe there is sufficient reason to justify cancellation of the defective solicitation and resolicitation of the requirement.

We have reviewed our decision and do not find that it was based on an error of fact or law and, therefore, we have no basis on which to disturb the decision. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1988).

The decision is affirmed.

for 
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of the United States